

From: [REDACTED]
To: [One Earth Solar](#)
Subject: Critique of Applicant's responses to Deadline 4 submissions.
Date: 30 November 2025 19:05:19

To **The Examining Authority**
Project Name: **One Earth Solar Farm**
PINS Reference: **EN010159**

From: Stephen Fox Interested Party Reference number: [REDACTED]
Date:30 November 2025

Dear Sirs

Kindly accept this submission for deadline 6.

Critique of Applicant's responses to Deadline 4 submissions.

This independent review evaluates the quality and compliance of the Applicant's (One Earth Solar Farm Ltd) responses submitted at Deadline 5. It assesses how the Applicant engaged with the critical written representations made by Interested Parties (IPs), including local residents, technical objectors, and statutory bodies like West Lindsey District Council (WLDC).

The review finds that the Applicant's responses exhibit a systemic **failure to engage substantively** with technical and procedural challenges. Instead of providing the "necessary and sufficient" evidence required for a Nationally Significant Infrastructure Project (NSIP), the Applicant has relied on:

1. **Circular Reasoning:** Dismissing new critiques of the Sequential Test by referencing previous, contested reports (*REP2-080*) without addressing the specific flaws identified in them.
2. **Commercial Convenience:** Rejecting lower-risk alternative sites based on land ownership constraints, a defence that has been rendered **procedurally unsound** by the September 2025 update to the Planning Practice Guidance (PPG).
3. **Procedural Deflection:** Refusing to provide auditable mathematical data (runoff coefficients) when requested by IPs, thereby preventing independent verification of the safety case.

The Examining Authority's (ExA) subsequent decision to issue a **Rule 17 request** inviting the Applicant to consider removing solar panels from Flood Zones 2 and 3 validates the IPs' central argument: the Applicant has failed to prove that development in the floodplain is necessary or safe.

1. The Sequential Test and Site Selection: A Policy Breach

A primary area of contention at Deadline 4 was the Applicant's justification for locating 56% of the project within high-risk Flood Zones (Zones 2 and 3). Submissions from both individual IPs (specifically regarding "constellations") and Local Authorities (WLDC) challenged the robust nature of the site selection process.

1.1 The "Constellation" Argument and Disaggregated Sites

The IP Critique (Submission REP4-079): An Interested Party submitted a detailed technical request for the "Robust Consideration of Alternative Site Constellations." This submission argued that the project's capacity (740MW) could be delivered by disaggregating the scheme into smaller clusters ("constellations") located on available **Flood Zone 1 (FZ1)** land, rather than a single massive site in the floodplain. It provided financial evidence suggesting that the high capital cost of flood resilience engineering (raised panels, compensatory storage) in FZ3 makes the "constellation" model financially superior.

The Applicant's Response (D4R80): The Applicant summarily dismissed this proposal, stating:

"The Applicant has considered whether a series of smaller sites could meet the same development need... and concludes that there are no other alternative smaller sites which could have been combined."

Critical Analysis: This response is **inadequate and potentially** [REDACTED] in light of the **September 17, 2025 PPG Update**, which clarifies that:

- **"Ownership is irrelevant"** when defining a reasonably available alternative site.
- **"Multiple sites"** must be considered if they can collectively meet the need.

By relying on their original assessment—which admitted that "willing landowners" were a factor in site selection—the Applicant is clinging to a commercial preference that contradicts the primacy of flood risk avoidance. They failed to provide the comparative financial modelling requested by the IP to prove that FZ1 constellations are unviable, likely because the "true cost" of FZ3 mitigation undermines their case.

1.2 Mis-categorization of Alternative Sites (WLDC Critique)

The Statutory Critique (WLDC Submission): West Lindsey District Council independently corroborated the IPs' concerns. They highlighted that specific alternative sites identified by the Applicant (e.g., **AP16, AP17, AP9, AP11**) were dismissed as being "primarily in Flood Zones 2 and 3," yet a visual review of the plans indicated significant proportions of these sites were actually in **Flood Zone 1**.

The Applicant's Response: The Applicant maintained that their assessment was robust but failed to explain the discrepancy between their classification (High Risk) and the visual evidence (Low Risk) presented by the Council.

Critical Analysis: The alignment between the detailed IP submissions and the Council's objection creates a powerful evidential weight. It suggests the Applicant has **systematically mis-categorised** lower-risk sites to artificially narrow the field of alternatives, ensuring their preferred (contracted) site appeared to be the only option. This effectively rigs the Sequential Test.

2. Hydrology and Flood Risk: The "Black Box" Défense

Interested Parties raised sophisticated technical objections regarding the hydrological impact of solar panels, specifically challenging the Applicant's assumption that the development is "hydrologically neutral."

2.1 The "Disconnected Impervious Surface" & Runoff

The IP Critique: Submissions cited peer-reviewed literature (*Baiamonte et al.*) demonstrating that solar panels concentrate rainfall into high-velocity "curtains" at the drip line, potentially increasing peak discharge rates by up to **11.7 times**. An IP submitted a formal **Rule 17 Request** for the Applicant to provide the specific **Runoff Coefficient ()** used in their model to prove this effect was calculated.

The Applicant's Response: The Applicant refused to provide a specific Technical Note or the raw coefficient values. Instead, they directed parties to "Section 4" of the existing Flood Risk Assessment (FRA) and relied on the Environment Agency's general lack of objection.

Critical Analysis: This represents a **breach of the Duty to Assist** the Examination. By refusing to disclose the input parameters of their model, the Applicant prevents the ExA from verifying whether the drainage system is designed for "Greenfield" runoff (standard grass) or "Accelerated" runoff (solar panels). If the model underestimates the kinetic energy of the water, the proposed mitigation (grass cover) will fail due to scouring, leading to unmanaged flood risk on third-party land—a direct violation of the **Exception Test**.

2.2 The "5mm Tolerance" Dispute

The IP Critique: Multiple IPs questioned the safety of the agreed **"5mm tolerance"** for flood level increases. They argued that in a real-world flood event involving debris, waves, and turbulence, a 5mm margin of error is scientifically negligible and masks the displacement of over **39,900 cubic meters** of flood water.

The Applicant's Response (D4R66):

"Within the EA's response... the EA confirm the agreed tolerance of 5mm... is therefore appropriately designed."

Critical Analysis: The Applicant is hiding behind the regulator. While the EA may have agreed to the tolerance *in principle*, the Applicant has failed to address the IP's specific calculation regarding the cumulative volume of water displaced. This suggests the project is relying on a "bureaucratic pass" rather than a physics-based safety case.

3. Consultation and Procedural Integrity

Issues regarding the transparency of the consultation process remain a significant friction point, particularly concerning the omission of community-generated evidence.

3.1 The Missing Health Survey

The procedural integrity of the Development Consent Order (DCO) Examination has been fundamentally compromised by the Applicant's sustained failure to disclose the mandatory

Health Survey, a document deemed a material consideration due to its direct relevance to potential significant adverse environmental and human health effects, which the Planning Act 2008 requires to be identified and mitigated. This failure was officially confirmed by the Examining Authority (ExA), which, through Examination Question 3 (ExQ3), acknowledged a "recognised deficiency of material evidence" by instructing other parties to submit the document if they possessed it. The Applicant's reliance on Planning Practice Guidance (PPG) that permits the summarisation of consultation responses is legally unsound, as the non-disclosure of a foundational technical study is not a failure of summarisation but an act of [REDACTED] exclusion or "concealment" of material facts. This [REDACTED] withholding represents a clear breach of the Applicant's fundamental duty to provide all necessary and sufficient material to allow the ExA to apply the correct statutory tests, attempting to [REDACTED] transfer the burden of curing evidential gaps onto Interested Parties and the ExA.

This procedural impropriety simultaneously violates the common law Gunning Principles of fair consultation and undermines the statutory planning balance. The lack of the critical Health Survey data, essential for assessing "population and human health" under the Environmental Impact Assessment (EIA) Regulations, fundamentally prevents Interested Parties from giving the proposals the required "intelligent consideration" (Gunning Principle 2). Crucially, the continued absence of this mandatory evidence also precludes the ExA and the Secretary of State from carrying out the "conscientious consideration" (Gunning Principle 4) necessary for a robust and legally sound planning balance. The result is a structural defect in the administrative record that ensures the final decision will not be based on legally sufficient material, thereby exposing the entire DCO application to significant vulnerability upon judicial review.

The IP Critique: Several submissions noted the exclusion of a specific "Mental Health and Lifestyle Survey" conducted by a local medical professional (Dr. Fletcher), which recorded 90%+ opposition and significant anxiety among residents.

The Applicant's Response: The Applicant argued they are only required to providing a "summary" of responses under the Consultation Regulations and are not obligated to publish every piece of third-party evidence.

Critical Analysis: While legally technically correct regarding "summaries," this response fails the **Gunning Principles** of fair consultation. By actively withholding a material piece of expert evidence regarding **Human Health** (an EIA topic), the Applicant has curated the evidence base to exclude "inconvenient truths." This has forced the ExA to intervene with its own written questions (ExQ3) to locate the missing document.

3.2 Responses to Individual Residents

The Issue: Residents (e.g., Tania Russell, D4R6) raised specific concerns about visual impact and amenity.

The Applicant's Response: The responses are largely standardized, referencing the "Landscape and Visual Impact Assessment" (LVIA) and claiming that "mitigation planting" will eventually screen the views.

Critical Analysis: These responses treat local knowledge as "perception" rather than data. They fail to acknowledge the immediate and long-term degradation of rural amenity described by residents, offering 15-year planting growth timelines as an immediate solution.

4. Conclusion: A Strategy of Attrition

The Applicant's responses at Deadline 5 reveal a strategy of **attrition and formalism**. Rather than engaging with the substance of the "Constellation" argument or the "Runoff" physics, the Applicant repeats their reliance on:

1. **Old Data:** Citing previous reports (REP2-080) that have been substantively challenged.
2. **Regulatory Silence:** Using the Environment Agency's lack of objection as a shield against detailed technical critique.
3. **Commercial Secrecy:** Refusing to disclose financial viability assessments or raw hydrological coefficients.

Final Verdict: The Applicant has **failed to demonstrate compliance** with the updated Sequential Test (September 2025 PPG). By dismissing the "Constellation" alternative without a transparent, ownership-blind assessment, they have left the application vulnerable to refusal. The ExA's subsequent Rule 17 request to consider removing panels from the flood. Zones is the ultimate confirmation that the Applicant's Deadline 5 responses were insufficient to prove the safety and legality of the scheme.

The policy of non-engagement has been consistently deployed by the applicant throughout, reflecting the complacent attitude displayed by the project lead at consultation events which was "this is going to happen" making everyone ask – "why were we even invited?" and "what are we doing here?".

Footnotes

1. One Earth Solar Farm Ltd is a joint venture between Padero Solaer Ltd (PS Renewables) and Ørsted Onshore UK Ltd.
2. The Planning Practice Guidance (PPG) update on Flood Risk and Coastal Change was published on 17 September 2025.
3. The updated PPG clarifies that for the Sequential Test, 'Ownership is irrelevant' in defining a 'reasonably available' alternative site.
4. The Applicant's response to REP4-079 asserts that alternative smaller sites could not be combined to meet the same development need.

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Yours faithfully

Stephen Fox